

- (1) Whether the claimant suffered an accidental injury that arose out of and in the course of his employment with the respondent.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based upon the evidence presented and for purposes of preliminary hearing, the Appeals Board finds as follows:

(1) The Appeals Board finds that the claimant has established by a preponderance of the credible evidence that he suffered an accidental injury that arose out of and in the course of his employment with the respondent and affirms in all respects the Preliminary Hearing Order dated February 3, 1994, entered by Administrative Law Judge John D. Clark.

The evidence presented at the preliminary hearing through the claimant's testimony and medical record exhibits established that the claimant had an initial onset of low back pain from lifting at work on October 19, 1993. Subsequently, claimant slipped on some oil at work on November 9, 1993, and caught himself. Immediately after this fall he started to experience low back pain that eventually shot into his buttocks. He was provided medical treatment at the emergency room of a local hospital. As the result of his low back pain he was given a week off work by respondent with pay.

His family physician initially treated him for his back problem but eventually referred him to an orthopedic surgeon who finally released him to return to work with restrictions on February 2, 1994. The restrictions were no repetitive lifting over 25 pounds and limited bending and twisting. At the time of the preliminary hearing the claimant testified that he was still under the orthopedic surgeon's care.

The respondent during cross-examination of the claimant makes an effort to discredit the claimant and to establish that he hurt his back either at home or helping a friend move prior to the incident at work on November 9, 1993. However, claimant specifically denies that he hurt his back other than at his place of employment with the respondent. The respondent presents no other evidence to substantiate its allegation.

AWARD

WHEREFORE, it is the finding, decision and order of the Appeals Board that the Preliminary Hearing Order of Administrative Law John D. Clark dated February 3, 1994, ordering temporary total disability benefits and medical paid, is hereby affirmed in all respects.

IT IS SO ORDERED.

Dated this _____ day of May, 1994.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

cc: James B. Zongker, PO Box 47370, Wichita, Kansas 67201-7370
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John D. Clark, Administrative Law Judge
George Gomez, Director

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